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E-MAILED ONLY

November 21, 2003

Mr. Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Electric Competition Advisory Group - Request for Reply
Comments, Docket No. E-00000A-02-0051, et al.

Dear Mr. Johnson:

I am writing today on behalf of the Arizona Transmission Dependent Utility Group.¹ We are interveners in this docket and have been monitoring the activities of the Electric Competition Advisory Group. As entities not regulated by the Arizona Corporation Commission, we are interested in your deliberations over the electric competition rules because your decisions affect utilities with which we deal and your decisions affect attitudes generally about electric utility conduct.

Normally, we would not participate in the comment process that you began in March and have extended by your memorandum of October 17, 2003. However, in reviewing the comments submitted last spring, certain of the comments of Arizona Public Service Company appear to us to require some clarification.

On page 10 of its April 21, 2003 comments to ECAG, APS poses the question: "How are jurisdictional conflicts or deficiencies to be

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

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resolved or overcome, including in particular issues relating to public power and special purpose districts?"

We do not believe that this question leads to productive discussion within the context of examining the Commission's retail electric competition rules. As you well know, the Commission's jurisdiction is set by the Arizona Constitution, as is the role of certain special purpose districts engaged in providing retail electric service. Short of a constitutional amendment, which would likely also address other jurisdictional matters related to the Commission, we cannot see how this matter could be intelligently discussed. Since the focus of your effort is on the provisions of ACC rules related to retail electric competition, we think the discussion implicated by the above question is beyond the purview of your current effort.

APS also provided comments, on pages 19-20, with regard to jurisdiction, service areas and the provisions of the 1998 electric competition statutes. A great deal of relevant fact is left out of that discussion.

The districts exempted from those statutes do not have exclusive service areas. The premise of the statutes concerning retaining service areas thus cannot be applied to them. In virtually every instance, each of these districts has another service provider, and sometimes more than one, in the same area. That has always been the case. Indeed, this overlap of service providers is the only place one will find any sort of electric competition at the retail level in Arizona today. It has been the only vestige of competition in this industry since the 1920's.

Contrary to APS' statement, the electric competition statutes do apply to these districts in certain specific instances, including protection of consumer information and protection of sensitive, competitive information. Thus, the Legislature very specifically and carefully designed those statutes based on the understanding that the small special districts exempt from the more extensive requirements of that law were exempt because of their nature as small and non-exclusive providers. Small cities and towns providing retail electric service were treated similarly.

We are also struck by the concern that APS expresses over duplication of distribution facilities. We are aware that APS is

currently constructing distribution facilities in areas where other lines already exist. There must be some economic basis for its doing so and thus APS' own activity is not what it would characterize as "unnecessary and harmful duplication". How this presents a standard which this Commission can address is an interesting question.

The rule under which these latter comments were provided (Rule 1610) discusses the use of intergovernmental agreements (IGA's). We think Arizona law on that subject may require some study of the use of IGA's. Nevertheless, our members have always tried to cooperate with the Commission and with other utilities in Arizona in ensuring that Arizona consumers get the lowest possible cost electric service. Given the fact that most of the small special districts in Arizona currently operate and have operated in competition with other utilities in the same areas, rethinking the nature of the interface between these small entities and the regulated community may be worthwhile.

Finally, APS complains about a recent decision of the Arizona Supreme Court in which it lost a battle to prevent competition from a small irrigation district in Pinal County. We will not attempt to correct the mischaracterization of that decision in APS' comments. The decision is self-explanatory. What strikes us as most interesting about the comments is the fear of competition that APS expresses with these small entities that collectively make up less than 10% of their peak load and individually are even smaller. How this would affect the functioning of the largest electric utility in Arizona is beyond us. How the existence of these small special districts having to compete with APS relates to a so-called "level playing field" is also beyond us. It is true that the historic overlap of these small districts by APS and other utilities as Arizona grew has created certain areas where more than one electric service provider exists. This historic fact presents consumers in those areas with the possibility of choice, something the current electric competition rules has not stimulated. If APS is afraid of these little entities, how can it stand up to the large independent power producers? Someone once said "methinks thou doth protest too much".

We would be happy to participate in a dialogue about how the Commission rules could more accurately address the distinction between electric service providers regulated by the Commission and

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those operating in Arizona that are not. However, we believe that the Commission's efforts would be best focused on revision and updating of its rules. We think the Commission should decline APS' offer to join it at the Legislature to beat up on a collection of small entities that cannot seriously be said to provide any meaningful impact on a concept of a level playing field or any other yardstick applicable to this dialogue.

Thank you for the opportunity to comment as you continue to review the extensive list of issues that the electric competition rules have generated.

Sincerely,
ROBERT S. LYNCH & ASSOCIATES

/s/

Robert S. Lynch

RSL:psr

cc: Arizona Corporation Commissioners
Arizona Transmission Dependent Utility Group